IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Crl.Rev.Pet.No. 489 of 2007(A)

CRL.A.593/04 OF SESSIONS JUDGE, MANJERI
S.T.47/04 OF JFCM-II(FOREST OFFENCES), MANJERI

REVN. PETITIONER: APPELLANT/ACCUSED

A.C.ANWAR, S/O. MOHAMMED,
AGED 38 YEARS, AREEPURAM HOUSE,
PUTHANKUNNU, SULTHAN BATHERY, WAYANAD DISTRICT.

BY ADV. SRI.S.M.PRASANTH

RESPONDENTS: RESPONDENTS/STATE & COMPLAINANT

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. P.ABDURAHIMAN, S/O. MARHOOM AHAMMED
MUSALIYAR, PUTHALAVAN HOUSE, NARUKARA,
KARUVAMBRAM P.O., MANJERI,
MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON 03.07.2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 489 OF 2007

Dated this the 3rd day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the revision petitioner who was the accused in S.T. No.47/2004 on the file of the J.F.C.M.-II(Forest Offences), Manjeri challenges the conviction entered and the sentence passed against him concurrently by the courts below for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881.

2. The allegation against the petitioner was that he borrowed Rs.1 lakh from the 2nd respondent complainant on 25.5.2003 in the presence of the petitioner's brother Alavi and that the petitioner issued two cheques dated 17.12.2003 each for Rs.50,000/- towards discharging the said liability. Consequent on the presentation for encashment of the cheque before the drawee Bank and dishonour of the same due to insufficiency of funds in the petitioner's account, the 2nd respondent filed a private complaint against the petitioner herein in respect of one of the two cheques. With regard to the other cheque, the 2nd respondent herein filed another complaint as S.T.No.48/2004 which however ended in acquittal.

3. The courts below did not countenance the defence set up by the revision petitioner and accordingly found him guilty of the offence.

4. The learned counsel appearing for the revision petitioner made the following submissions before me in support of the revision:-

The cheque in question is Ext.P1 cheque bearing No.204646. With regard to the other cheque bearing No.204645, the 2nd respondent complainant had issued Ext.D1 notice to the petitioner's brother Alavi against whom the prosecution launched by the 2nd respondent complainant as S.T.No.48/2004 ended in acquittal. In the complaint what is alleged is that Alavi was a partner and notice was given to him also. But from the witness box the 2nd respondent complainant, examined as PW1, would say that Ext.D1 notice was issued to Alavi since Alavi had also accompanied the petitioner herein. PW1 has also admitted that the transaction covered by the present case and S.T.No.48/2004 is one and the same. If so, there was absolutely no reason for getting two cheques. PW1 would have it that the notice sent to Alavi was under a mistake.

5. Both the courts below did not accept the defence based on Ext.D1 notice. Both the courts below have accepted the version of the 2nd respondent, examined as PW1, to hold that the amount of Rs.50,000/- covered by Ext.P1 cheque was borrowed by the accused/petitioner herein and that Ext.P1 cheque was duly drawn by the petitioner herein towards the said liability. The said findings are pure findings of fact based on an appreciation of the oral and documentary

evidence in the case. Merely because the 2nd respondent complainant unsuccessfully prosecuted the petitioner's brother Alavi for the remaining amount covered by the second cheque, it does not follow that the case against the petitioner herein is improbable or false. The trial Magistrate, who had the unique advantage of seeing the witness and assessing their credibility, was not inclined to accept the defence set up by the petitioner herein. I do not, therefore, find any good ground to interfere with the conviction entered by the courts below.

6. What now survives for consideration is the question as to the legality and extent of the sentence. The lower appellate court was indulgent enough to reduce the sentence to one of imprisonment till the rising of the court and payment of the cheque amount as compensation to PW1. I see no reason to interfere with the said sentence except to permit the revision petitioner to pay the cheque amount of Rs.50,000/- by way of compensation under section 357(3) Cr.P.C. within three months from today, failing which the default sentence imposed by the lower appellate court shall operate.

This Revision is dismissed confirming the conviction entered and the sentence passed but granting three more months' time to the revision petitioner to pay the compensation.

(V. RAMKUMAR, JUDGE)

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